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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/094,505      06/10/98      KLIMA      W      100-168P-WLK

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QM02/0306

EXAMINER
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MAUST, T

ART UNIT	PAPER NUMBER
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3751

DATE MAILED:

03/06/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/094,505

Applicant(s)

KLIMA ET AL.

Examiner

Timothy L. Maust

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 20-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15 is/are rejected.
- 7) ☐ Claim(s) 14 and 16-19 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 14) ☒ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 17) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Species I in Paper No. 4 is acknowledged.

### ***Drawings***

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-6, 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 2-4 and 10, the "cartridge" (on line 1 of each claim) is inferentially included as part of the claimed combination of elements rendering the claims indefinite as to whether the combination of a cartridge and an apparatus for filling a cartridge or subcombination of an apparatus for filling a cartridge is intended to be

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claimed. Should applicant intend the "cartridge" to be a positive element of the claimed combination, then antecedent basis should be provided therefor.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claim 13 is rejected under 35 U.S.C. 102(e) as being anticipated by Connan.

In regard to claim 13, the method would be inherent during normal use and operation of the device.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7-9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Connan in view or Hauser et al.

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In regard to claims 1 and 7, the Connan reference discloses an "apparatus" (see Fig. 4) for filling a cartridge 12 having at least two compartments 22 and 24 for storing fluid, comprising at least one "fluid reservoir" (34 and 38), and at least two "filling tubes" (36 and 40). Connan further discloses the supply of material being controlled by control unit 50 (see col. 4, lines 58-65), but is not explicit as to the fluid material being supplied by at least two "metering pumps" connected to the at least one "reservoir". However, the Hauser et al. reference discloses another fluid filling apparatus (see Fig. 2) having "metering pumps" (6 and 6') connected to reservoirs (4 and 5) to control the amount of material delivered. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ metering pumps on the Connan device (if not already) as, for example, taught by Hauser et al. in order to control the amount of material delivered.

In regard to claims 2, 3, 8 and 9, Connan explicitly states in column 1, lines 23-26 that the invention is readily applicable to the filling of plural chamber containers having more than two chambers (i.e., 3 and 4 chambers) which would inherently include the necessary additional equipment.

In regard to claim 15, the method as claimed would be inherent during normal use and operation of the device.

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***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Mueller reference discloses a multiple chamber container (see Figures 2, 7 and 8) similar to Applicant's device.

***Allowable Subject Matter***

Claims 4-6 and 10-12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 14 and 16-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

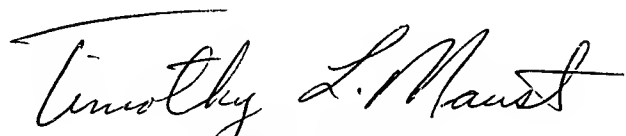
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Maust whose telephone number is (703) 308-3390. The examiner can normally be reached on Mon. - Thur. 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry J. Recla can be reached on (703) 308-1382. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7766 for regular communications and (703) 308-7766 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

tlm  
March 1, 2000

  
TIMOTHY L. MAUST  
PATENT EXAMINER